IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

CHARLES ELLIS SHIRLEY	§

v. § CIVIL ACTION NO. 6:10cv364

CAPTAIN M. STARKEY §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Relator Charles Shirley, proceeding *pro se*, filed this application for the writ of mandamus, seeking the issuance of the writ against the Sheriff's Department of Henderson County, Texas. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the request for mandamus relief be denied. The Magistrate Judge observed that the federal courts lack jurisdiction to issue writs of mandamus against state or county officials or agencies. Shirley has filed objections to the Report, setting out the reasons why he seeks mandamus relief, but fails to show that the court has jurisdiction to issue writs of mandamus against the defendants in the case. His objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Report of the Magistrate Judge and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of mandamus be and hereby is DISMISSED as frivolous with prejudice as to its refiling in federal court, but without prejudice as to Shirley's right to seek mandamus relief in state court. It is further

ORDERED that because the nature of the underlying action in this case sounds in civil rights and not habeas corpus, the terms of the Prison Litigation Reform Act apply and the dismissal of this petition shall count as a strike for purposes of 28 U.S.C. §1915(g). Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 20th day of September, 2010.

LEONARD DAVIS

UNITED STATES DISTRICT JUDGE